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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 5174

12 **FREDDRICK JOHN COUSART**
13 **328 Snow Flake Way**
14 **Pittsburg, CA 94565**

A C C U S A T I O N

15 **Pharmacy Technician License No. TCH**
125562

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about October 16, 2012, the Board of Pharmacy issued Pharmacy Technician
23 License Number TCH 125562 to Fredrick John Cousart (Respondent). The Pharmacy
24 Technician License expired on July 31, 2014, and has not been renewed.

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1 6. Code section 493 states:

2 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
3 the department pursuant to law to deny an application for a license or to suspend or revoke a
4 license or otherwise take disciplinary action against a person who holds a license, upon the
5 ground that the applicant or the licensee has been convicted of a crime substantially related to the
6 qualifications, functions, and duties of the licensee in question, the record of conviction of the
7 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
8 and the board may inquire into the circumstances surrounding the commission of the crime in
9 order to fix the degree of discipline or to determine if the conviction is substantially related to the
10 qualifications, functions, and duties of the licensee in question.

11 “As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and
12 ‘registration.’”

13 7. Code section 4300 states, in part, that “[e]very license issued may be suspended or
14 revoked.”

15 8. Code section 4300.1 states:

16 “The expiration, cancellation, forfeiture, or suspension of a board-issued license by
17 operation of law or by order or decision of the board or a court of law, the placement of a license
18 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
19 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
20 proceeding against, the licensee or to render a decision suspending or revoking the license.”

21 9. Code section 4301 states, in part:

22 “The board shall take action against any holder of a license who is guilty of unprofessional
23 conduct Unprofessional conduct shall include, but is not limited to, any of the following:

24 . . .

25 “(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
26 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
27 whether the act is a felony or misdemeanor or not.

28 . . .

1 “(j) The violation of any of the statutes of this state, or any other state, or of the United
2 States regulating controlled substances and dangerous drugs.

3 ...

4 “(l) The conviction of a crime substantially related to the qualifications, functions, and
5 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
6 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
7 substances or of a violation of the statutes of this state regulating controlled substances or
8 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
9 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
10 The board may inquire into the circumstances surrounding the commission of the crime, in order
11 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
12 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
13 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
14 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
15 of this provision. The board may take action when the time for appeal has elapsed, or the
16 judgment of conviction has been affirmed on appeal or when an order granting probation is made
17 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
18 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
19 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
20 indictment.

21 ...

22 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
23 violation of or conspiring to violate any provision or term of this chapter or of the applicable
24 federal and state laws and regulations governing pharmacy, including regulations established by
25 the board or by any other state or federal regulatory agency.

26 ...”

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1 COST RECOVERY

2 9. Code section 125.3 provides, in part, that the Board may request the administrative
3 law judge to direct a licensee found to have committed a violation or violations of the licensing
4 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
5 case.

6 DRUGS

7 10. Acetaminophen-hydrocodone, also known as Vicodin, is a Schedule II controlled
8 substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(J), and a
9 dangerous drug according to Business and Professions Code section 4022 in that it can be
10 lawfully dispensed only by prescription. Acetaminophen-hydrocodone is a combination opioid
11 narcotic analgesic drug consisting used to relieve moderate to severe pain.

12 11. Ambien is a Schedule IV controlled substance pursuant to Health and Safety Code
13 section 11057, subdivision (d)(32), and a dangerous drug according to Business and Professions
14 Code section 4022 in that it can be lawfully dispensed only by prescription. Ambien is used for
15 the treatment of insomnia and some brain disorders, and as a date-rape drug.

16 12. Alprazolam, also known as Xanax, is a Schedule IV controlled substance pursuant to
17 Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug according to
18 Business and Professions Code section 4022 in that it can be lawfully dispensed only by
19 prescription. Alprazolam is commonly used for the medical treatment of panic disorder and
20 anxiety disorders.

21 13. Clonazepam is a Schedule IV controlled substance pursuant to Health and Safety
22 Code section, subdivision (d)(7), and a dangerous drug according to Business and Professions
23 Code section 4022 in that it can be lawfully dispensed only by prescription. Clonazepam is a
24 benzodiazepine drug having anxiolytic, muscle relaxant, amnestic, sedative, and hypnotic
25 properties.

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1 FACTUAL BACKGROUND

2 14. On February 5, 2014, at approximately 7:49 p.m., Daly City Police Department
3 (DCPD) officers were investigating a report from a tested reliable informant that Respondent
4 would be in Daly City, California, in the area of Templeton and Roosevelt Avenues, to sell a
5 large amount of controlled substance pills. The informant provided these officers with
6 Respondent's name, positively identified Respondent from a DMV photograph, provided a
7 description of Respondent's vehicle, and informed the officers that Respondent worked at a
8 pharmacy and obtained the drugs he would be selling from his employer-pharmacy.

9 15. The DCPD officers assigned to the area identified Respondent, sitting in his vehicle
10 on Templeton Avenue, and detained and questioned him. During a search of Respondent's
11 possessions, DCPD officers found 285 pills of Acetaminophen-hydrocodone, 100 pills of
12 Ambien, 60 pills of Alprazolam, and 500 pills of Clonazepam.

13 16. After DCPD officers placed Respondent under arrest and read him his Miranda rights,
14 Respondent told them that he was an employee of Walgreens and had been stealing pills,
15 including the pills found in his possession, from his employer for approximately two to three
16 months. He also told DCPD officers that he planned to sell the pills found in his possession for
17 \$2,000.

18 17. On or about March 6, 2014, in *People v. Fredrick John Cousart*, Superior Court of
19 California, County of San Mateo (Case No. NF425922), Respondent was charged with four
20 felony counts for possession with intent to sell the controlled substances DCPD officers found in
21 his possession, in violation of Health and Safety Code sections 11351; and 11375, subdivision
22 (b)(1); and 11378. On or about August 6, 2014, Respondent pled no contest to violating Health
23 and Safety Code section 11351, a felony, based on his unlawful possession of hydrocodone for
24 purposes of sale. Thereafter, Respondent was sentenced to 180 days in county jail.

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1 CAUSES FOR DISCIPLINE

2 FIRST CAUSE FOR DISCIPLINE

(Criminal Conviction)

3 (Bus. & Prof. Code §§ 490, subds. (a)-(c), and 493)

4 18. Respondent's license is subject to disciplinary action because he has been convicted
5 of a crime substantially related to the qualifications, functions, or duties of the business or
6 profession for which Respondent's Pharmacy Technician license was issued. (Bus. & Prof. Code
7 §§ 490, subdivisions (a) through (c), and 493). The circumstances are described in paragraphs 10
8 through 17, above.

9 SECOND CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct – Criminal Conviction)

(Bus. & Prof. Code § 4301, subds. (j) and (l))

11 19. Respondent's license is subject to disciplinary action because he has acted
12 unprofessionally by being convicted of violating a California statute regulating controlled
13 substances and dangerous drugs. (Bus. & Prof. Code § 4301, subds. (j) and (l)). The
14 circumstances are described in paragraphs 10 through 17, above.

15 THIRD CAUSE FOR DISCIPLINE

16 (Unprofessional Conduct – Commission of an Act Involving Moral Turpitude, Dishonesty, Fraud,
Deceit, or Corruption)

17 (Bus. & Prof. Code § 4301, subd. (f))

18 20. Respondent's license is subject to disciplinary action because he has acted
19 unprofessionally by committing an act involving moral turpitude, dishonesty, fraud, deceit, or
20 corruption. (Bus. & Prof. Code § 4301, subd. (f)). In particular, Respondent admittedly stole
21 controlled substances and dangerous drugs from his pharmacy-employer to sell and benefit
22 himself. The circumstances are described in paragraphs 10 through 17, above.

23 FOURTH CAUSE FOR DISCIPLINE

24 (Violating the Pharmacy Law, and Applicable Federal And State Laws And Regulations)

(Bus. & Prof. Code § 4301, subd. (o))

25 21. Respondent's license is subject to disciplinary action because he has violated and/or
26 attempted to violate, directly or indirectly, provisions of the Pharmacy Law, Business and
27 Professions Code section 4000 *et seq.*; and applicable federal and state laws and regulations
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governing pharmacy. (Bus. & Prof. Code § 4301, subd. (o)). The circumstances are described in paragraphs 10 through 17, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Respondent's Pharmacy Technician License Number TCH 125562;

2. Ordering Respondent to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: 5/4/15


VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SF2015900130